

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,)	
)	
)	
)	
v.)	ID No. 2007002401,
)	ID No. 2007003609
JOSEPH KNAPP,)	
)	
)	
Defendant.)	
)	

Date Submitted: August 31, 2022¹

Date Decided: October 11, 2022

ORDER

Upon consideration of Defendant’s Motion for Modification of Sentence (“Motion”),² Superior Court Criminal Rule 35, statutory and decisional law, and the record in this/these case(s), **IT APPEARS THAT:**

- (1) On August 27, 2020, Defendant pled guilty to Burglary Third Degree³

¹ Defendant submitted two motions for modification of sentence to the Court in this matter. Defendant’s motions are not photocopies, but they are handwritten copies and virtually identical. Defendant dated each motion August 25, 2022, but the motions were docketed separately and a day apart. For purposes of this Order, the motion bearing the earlier filing date controls.

² ID No. 2007002401, D.I. 21, 22; ID No. 2007003609, D.I. 18. For case ID No. 2007002401, Defendant’s Motion can be found at D.I. 21, and for case ID No. 2007003609, the motion can be found at D.I. 18. The subsequent copy is only found in case ID No. 2007002401 at D.I. 22. This Order will cite to each docket location of Defendant’s Motion.

³ ID No. 2007002401, D.I. 3. Defendant pled guilty and was sentenced on both cases at the same time because the charges in ID No. 2007003609 were committed within a week of the charges in ID No. 2007002401. At the time of these offenses, Defendant was on probation in Pennsylvania. ID No. 2007002401, D.I. 1; ID No. 2007003609, D.I. 1.

and Theft of a Motor Vehicle.⁴ Defendant was immediately sentenced as follows: as to Burglary Third Degree, 3 years at Level V, suspended upon acceptance into a Level III inpatient drug treatment program; and as to Theft of a Motor Vehicle, 2 years at Level V, suspended for 1 year at Level III, concurrent probation.⁵

(2) While on probation, Defendant continued engaging in criminal behavior, was charged, and convicted with Burglary Third Degree.⁶ Because of the new charge, Defendant was found in violation of probation (“VOP”) on June 15, 2021.⁷ For the VOP, Defendant was sentenced as follows: as to the original Burglary Third Degree, 3 years at Level V, suspended after 45 days at Level V, for 1 year at Level III GPS; and as to Theft of a Motor Vehicle, 2 years at Level V, suspended for 1 year at Level III, concurrent probation.⁸

(3) Defendant was found in violation of probation again on July 14, 2022. This second VOP implicated Defendant’s original Burglary Third Degree and Theft of a Motor Vehicle charges, as well as the subsequent Burglary Third Degree charge

⁴ ID No. 2007003609, D.I. 3.

⁵ ID No. 2007002401, D.I. 7; ID No. 2007003609, D.I. 7. All probation was to be served concurrently with any probation currently in place.

⁶ ID No. 2007002401, D.I. 16, at 4; ID No. 2007003609, D.I. 13, at 4. The case number for Defendant’s second Burglary Third case is ID No. 2105001828.

⁷ ID No. 2007002401, D.I. 11; ID No. 2007003609, D.I. 9. As to the subsequent Burglary Third conviction, Defendant was sentenced to 3 years at Level V with credit for 21 days previously served, for 1 year at Level III, concurrent probation. ID No. 2007002401, D.I. 16, at 4; ID No. 2007003609, D.I. 13, at 4.

⁸ ID No. 2007002401, D.I. 12; ID No. 2007003609, D.I. 10.

that Defendant accrued on June 2, 2021. Defendant was sentenced on the VOP as follows: as to Burglary Third Degree,⁹ 3 years at Level V, suspended for 3 years at Level IV DOC Discretion, suspended after successful completion of Level IV DOC Discretion, for 1 year at Level III, concurrent probation; as to Burglary Third Degree,¹⁰ 3 years at Level V, suspended for 1 year at Level III, concurrent probation; and as to Theft of a Motor Vehicle,¹¹ Defendant has discharged unimproved from probation.¹² In deciding Defendant's sentence, the Court specifically noted that "Defendant is in need of correctional treatment."¹³

(4) Defendant filed the instant Motion on August 31, 2022, asking the Court to modify his sentence to 3 years at Level IV, suspended after completion of a Level III inpatient treatment program, followed by 1 year at Level III, with outpatient treatment and weekly counseling as a special condition of probation.¹⁴

(5) In support of his motion, Defendant cites a lack of mental health care and insufficient counseling.¹⁵ He also states that the program in which he is currently enrolled is not conducive to his recovery, and that in the absence of a personalized

⁹ Defendant's original Burglary Third Degree charge in this matter. ID No. 2007002401.

¹⁰ Defendant's subsequent Burglary Third Degree Charge in this matter. ID No. 2105001828.

¹¹ ID No. 2007003609.

¹² ID No. 2007002401, D.I. 20; ID No. 2007003609, D.I. 17.

¹³ ID No. 2007002401, D.I. 20, at 2; ID No. 2007003609, D.I. 17, at 2.

¹⁴ ID No. 2007002401, D.I. 21, at 2-3 & D.I. 22, at 2-3; ID No. 2007003609, D.I. 18, at 2-3. Defendant's Motion does not challenge the Level V time, so the Court will address this motion as a request for modification of probationary sentence only.

¹⁵ ID No. 2007002401, D.I. 21, at 2 & D.I. 22, at 2; ID No. 2007003609, D.I. 18, at 2.

approach, he fears the treatment is “doing more damage [] than good.”¹⁶ Defendant urges the Court to look at his record for evidence showing that he “thrives”¹⁷ in Level III treatment.¹⁸

(6) Defendant’s Motion is not procedurally barred as untimely or repetitive; therefore, the Court will address Defendant’s Motion on the merits.¹⁹ Rule 35(b) places the burden of proof on “the movant to establish cause to modify a lawfully imposed sentence.”²⁰ Although the rule does not set forth specific criteria which must be met before the Court may grant a Rule 35(b) motion, “common sense dictates that the Court may modify a sentence if present circumstances indicate that the previously imposed sentence is no longer appropriate.”²¹

(7) Based on the record which includes a history of drug addiction and multiple violations of probation it is clear that Defendant needs treatment based in a correctional setting.

(8) The Court finds that Defendant’s sentence is appropriate for all the reasons stated at the time of sentencing. No additional information has been

¹⁶ ID No. 2007002401, D.I. 21, at 2 & D.I. 22, at 2; ID No. 2007003609, D.I. 18, at 2.

¹⁷ ID No. 2007002401, D.I. 21, at 2 & D.I. 22, at 2; ID No. 2007003609, D.I. 18, at 2.

¹⁸ ID No. 2007002401, D.I. 21, at 2 & D.I. 22, at 2; ID No. 2007003609, D.I. 18, at 2. Defendant is referencing the last time he received treatment at a Level III facility, where he reached “1 year clean and sober.”

¹⁹ See Super. Ct. Crim. R. 35(b); *see, e.g., State v. Joseph*, 2018 WL 1895697, at *1 (Del. Super. Apr. 11, 2018).

²⁰ *State v. Joseph*, 2018 WL 1895697, at *1 (Del. Super. Apr. 11, 2018).

²¹ *State v. Bailey*, 2017 WL 8787504, at *1 (Del. Super. Oct. 3, 2017).

provided to the Court which would warrant a reduction or modification of sentence.

NOW, THEREFORE, IT IS HEREBY ORDERED that Defendants' Motion for Modification of Sentence is **DENIED**.

/s/ Jan R. Jurden
Jan R. Jurden, President Judge

Original to Prothonotary

cc: Joseph Knapp (SBI # 00742037)
Jeffrey M. Rigby, DAG